



# THE INTERIM

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## IMPROVED LEGISLATIVE WEBSITE DEBUTS JULY 28

The Montana Legislature's website at [www.leg.mt.gov](http://www.leg.mt.gov) is sporting a fresh new look, some new content, and improved functionality. The changes became effective July 28.

For the past nine months, a legislative staff committee called the Website Content and Organization Group, along with legislative IT staff and a web development contractor, have been working to update the existing site. The new site now features:

- A new page template and color scheme.
- A wider page.
- A better search function.
- A printable version.
- Improved navigation schemes, including breadcrumbs.
- Some new content and organization.
- Better accessibility for people with disabilities.

Many of the changes were adopted in response to a survey of web users conducted at the end of last year.

Anyone with comments about the new site may send them to Gayle Shirley, legislative information officer and WCOG chair, at [leginfo@mt.gov](mailto:leginfo@mt.gov).

## LEGISLATIVE COUNCIL SETS TRAINING, ORIENTATION DATES

Legislative Council Sets Training, Orientation Dates...The Legislative Council voted at its June 24 meeting to schedule training for both new and veteran legislators Nov. 12-14 in the Capitol. Party caucuses will be held Nov. 12 at noon in the House and Senate chambers.

This year, orientation and training for legislators will offer two new features:

- advanced training sessions for veteran legislators; and
- policy caucuses that will give legislators a chance to visit with peers who share their policy interests, as well as legislative staff who work in specific policy areas.

The latest research and interim committee reports and recommendations also will be available.

Orientation and training sessions will run concurrently for new and veteran legislators, beginning at 3 p.m. on Nov. 12 and ending at 3:30 p.m. on Nov. 14. A dinner party for all participants, sponsored by the Legislative Council, will take place the evening of Nov. 13 at the Park Plaza Inn in downtown Helena.

## THE INTERIM

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**THE INTERIM** is a monthly newsletter that reports on the interim activities of legislative committees, including the Legislative Council, the Environmental Quality Council, the Legislative Finance Committee, the Legislative Audit Committee, and interim legislative committees and subcommittees staffed by the Legislative Services Division. Information about the committees, including meeting schedules, agendas, and reports, is found at <http://www.leg.mt.gov>. Follow the "Committees" link or the "Interims" link to the relevant committee. The newsletter is posted on the legislative branch website on the first of each month (follow the "Publications" link).

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Division**

Topics to be covered during orientation and training include:

- pay and benefits;
- computer services;
- bill mechanics;
- budget process;
- media relations; and
- constituent services

Legislators will have an opportunity to participate in mock committee hearings and floor sessions. For more information, contact Gayle Shirley, legislative information officer, at (406) 444-2957 or gshirley@mt.gov.

The Legislative Council considered a variety of other topics at its June 24 meeting:

Expansion of public-service television...The council discussed how best to increase access across Montana to the state government broadcasting service known as Television Montana, or TVMT. Acknowledging that any expansion would depend on funding and technological capacity, the council voted to aim for equitable distribution of available funds among the various video service providers in the state who are capable of offering transmission. The council also voted to aim for continued TVMT coverage both during sessions and in the interims between sessions. In the past, as a cost-saving measure, TVMT has cut back on the number of communities it serves during the interims.

Executive branch legislative review...The council reviewed about a dozen bill draft requests presented by David Ewer, director of the Governor's Office of Budget and Policy Planning. The proposals, which the Governor's Office intends for introduction during the 2009 session, deal with ongoing items such as the general fund budget, allocation of federal funding, the state pay plan, and bonding.

The council voted to approve the bill draft requests, with the exception of a proposal to consolidate budgeting for the state's information technology and long-range building programs. The council asked that the OBPP provide a more extensive presentation on this proposal at its September meeting. Ewer said that he will do so, and he asked the council's permission to present at that time any additional legislative proposals that the Governor's Office might finalize over the next few months.

Other business...The council authorized the expenditure of \$72,000 from the legislative IT reserve account to upgrade the antiquated House sound system.

The council approved a request by Code Commissioner Greg Petesch to draft a bill completing an effort to neutralize gender and remove archaic language from the Montana Code Annotated.

The council voted to seek a statutory change increasing from three to six the number of times legislators may receive reimbursement for the cost of travel home during sessions.

The council voted to seek a statutory change authorizing a \$200-a-month stipend for legislators to cover telephone calls and other incidental costs related to their work as legislators.

Next meeting date... The next meeting of the council is scheduled for Sept. 16, when the council will:

- Take action on a legislative computer system plan.
- Refine and adopt a proposed Legislative Services Division budget.
- Decide whether to adopt proposed House, Senate, and Joint rules for consideration by the rules committees.
- Discuss ongoing preparations for the 2009 session.

For more information about the Legislative Council, visit [www.leg.mt.gov/legcouncil](http://www.leg.mt.gov/legcouncil) or contact Susan Fox at (406) 444-3066 or [sfox@mt.gov](mailto:sfox@mt.gov).

## TAXABLE TRAVEL EXPENSE REIMBURSEMENTS

This article provides information on travel reimbursement payments that are taxable to legislators under the Internal Revenue Code.

Although Internal Revenue Service requirements are not new, the information is provided at this time to answer recent questions from legislators about paychecks and W-2 reporting. The requirements discussed in this article apply only during the legislative interim--different rules apply during legislative sessions.

Taxable meals...The Internal Revenue Code allows an exclusion from an employee's income of amounts received from an employer as reimbursement of travel and other business-related expenses. The exclusion is permitted for ordinary and necessary business expenses incurred while traveling away from home in pursuit of a trade or business. The Internal Revenue Service and Tax Courts have consistently held that **to be considered "away from home" the traveler must be away overnight**. If the employee is reimbursed for expenses while not on overnight travel, IRS rules require that the employer treat those amounts as taxable to the employee.

In response to the IRS rules, payments to legislators for meals are reported as taxable income when the legislator claim form does not indicate there was an overnight stay.

Taxable non-receipted lodging...IRS Publication 463 requires that reimbursement paid to employees must meet all three of the following rules to be considered as reimbursement paid under an accountable plan:

- the expense must have a valid business connection or purpose;
- the expense must be adequately substantiated; and
- advances in excess of substantiated expenses must be returned within 30 days from the end of the travel.

"Adequately substantiated" as described by the IRS, is a statement of expense, account book or a similar record in which each expense is itemized, accompanied by documentary evidence (receipts) of the expense. If accountable plan requirements are not met, then payment is taxable to the employee.

Non-receipted lodging (\$12 a night) paid to legislators does not meet the "adequate substantiation" requirement and is reported as taxable income to legislators.

Reporting...The financial services office of the legislative branch reports taxable meals and non-receipted lodging through the state's payroll system. The reported amount is included in the calculation of taxes withheld for federal and state purposes and for FICA and Medicare taxes. When W-2s are issued, the taxable reimbursement amounts are included in the total income reported and amounts withheld on the taxable reimbursements are included in the total of taxes withheld.

Please consult your tax advisor for additional information.

## MILEAGE REIMBURSEMENT RATE INCREASE

Effective July 1, 2008, the personal car mileage reimbursement rate increased from 50.5 cents a mile to 58.5 cents a mile. Legislators are entitled to the 58.5-cent rate when using a personal vehicle for official travel.

## LEGISLATIVE AUDIT COMMITTEE

The Legislative Audit Committee met on June 20 to consider the following audit reports presented by Legislative Audit Division staff:

### Financial Audit

Montana Water Pollution Control and Drinking Water State Revolving Fund Programs (08-29)...This audit report documents the results of the fiscal year 2006-07 financial audit of the Montana Water Pollution Control State Revolving Fund and Drinking Water State Revolving Fund programs. The Department of Natural Resources and Conservation and the Department of Environmental Quality requested the audit of these programs because annual audits are required by the

federal Environmental Protection Agency.

The objectives of a financial audit include determining if a program's financial statements present fairly its financial position at June 30, 2007, and the results of the program's operations for the fiscal year then ended.

The audit tested compliance of the two programs with state and federal laws that have a direct and material effect on the financial statements. An unqualified opinion was issued which means the reader can rely on the information presented in the financial statements.

The audit uncovered material weaknesses in controls over recording fund balance related to loans receivable and accurate presentation of financial position and results of operations identified during this audit.

### Performance Audits

Emergency Medical Services (EMS) (07P-11)...This audit report documents the results of the analysis of EMS capabilities and availability. The report shows that gaps in available services exist, primarily for advanced level care in rural areas and for all levels of care in central and eastern parts of Montana. Based on review of administration and management of EMS at the state level, standards of timeliness of EMS response, quality improvement, and medical direction could be enhanced. Additionally, management controls for EMS program activities within the Department of Public Health and Human Services could be strengthened and a new EMS governance structure should be considered.

Improving Montana's Opencut Mine Permitting Process (08P-04)...This audit report documents the results of the Department of Environmental Quality's responsibility for permitting, monitoring, and ensuring reclamation of opencut mines in Montana. The performance audit focused on DEQ's permitting activities. The department has reported a backlog of pending permits, and has requested additional staff to deal with the backlog. However, because of a lack of management information, combined with a need to improve efficiencies of operations, the audit was unable to confirm the need for additional staff. The audit presented a number of recommendations for improving DEQ's internal controls and programmatic activities, including clarifying staff responsibilities, improving coordination with the Department of Revenue to increase Resource Indemnity and Groundwater Assessment Tax revenue, and clarifying the need for public notification of proposed opencut mines.

Program and Policy Issues Impacting State Superfund Operations (08P-05)...This audit report documents the results of the program and policy areas that affect state superfund operations of the Department of Environmental Quality. Montana's state superfund program was created in 1985 for dealing with contaminated sites which were not being handled by federal superfund activities. There are 209 sites currently listed on the state superfund priority list, with 57 ranked as maximum or high priority.

Analysis of state superfund operations shows a tenuous connection between funding and current statutory obligations. The analysis also showed that the department could improve long-term strategic planning, its process for recovering state oversight costs, and the submission and approval process for its voluntary cleanup program. The recommendations in the audit include the need to improve controls over program operations, policy changes to ensure program success, and procedural changes to improve remediation planning. Specific audit recommendations include implementing long-term planning, improving department cost recovery controls, resolving funding problems and conflicting statutory mandates, refocusing department efforts, and adopting additional application process strategies to improve voluntary cleanup operations

#### Montana School for the Deaf and Blind (07P-13)...

This audit report documents the results of the performance audit of the Montana School for the Deaf and Blind. The audit contained three positive conclusions, two of which related to the on-campus services provided to students and one in the area of school safety. The audit also includes two audit recommendations. One relates to the school's potential eligibility for additional federal funds and the other to improving the school's workload management.

#### **Performance Audit Follow-up Reports:**

- Right-of-Way Acquisition Process (08SP-32, original report 06P-09), Montana Department of Transportation
- Local Government Reimbursement for Joint Construction Costs (07SP-024, original report 05P-05) Montana Department of Transportation
- Use of Electronic Supervision Technologies (08SP-30, orig. report 06P-14), Department of Corrections
- Small Business Development Centers (08SP-01, orig. report 05P-04), Department of Commerce

Audit reports are available online at [www.leg.mt.gov/audit](http://www.leg.mt.gov/audit) (Legislative Audit Division website). The next Legislative Audit Committee meeting will be next November at the call of Sen. Joe Balyeat, Legislative Audit Committee chair.

## **STATE ADMINISTRATION AND VETERANS' AFFAIRS**

The Committee met on June 30 to finish work on the HJR 46 study of election laws and to decide whether to request for drafting state agencies' proposals for legislation to be considered during the 2009 regular session.

HJR 46 study of election laws...The committee has essentially finished the HJR 46 study of state election laws.

The committee requested legislation for:

- a general clean up of Title 13, MCA, election laws (LC 35);
- allowing youth ages 16-17 to serve as election judges (LC 36);
- clarifying the handling of absentee ballots if a candidate dies and the ballots have been mailed or voted; and
- giving county election administrators the discretion to determine when to use accessible voting machines in mail ballot elections. The committee is awaiting further information on accessible voting machines before taking final action on the bill draft.

Mail ballot pilot project counties selected...The committee heard an update on LC 60, the bill draft that would establish a mail ballot pilot project for all elections held in selected counties in 2009 and 2010. Seventeen counties expressed interest in taking part in the pilot project, and the committee included all of them in the bill draft.

Participating counties will hold all elections by mail, if the elections are conducted by the county election administrator. No polling places would be open during the pilot project period. The pilot project would include federal and state elections held during the time period; state law currently prohibits holding those elections by mail.

LC 60 stemmed from the HJR 46 study that called for a comprehensive cleanup and clarification of existing laws, including the possibility of expanding the use of mail ballot elections. The committee decided earlier in the interim to pursue a pilot project that expanded mail ballot elections on a limited basis, so lawmakers could evaluate how the change affected voter registration and turnout. The participating counties will be required to report detailed information about the elections. The committee also agreed that the state should seek similar information from non-participating counties, for purposes of comparison.

The 17 counties included in the bill draft are: Big Horn, Blaine, Carbon, Carter, Gallatin, Jefferson, Lake, Lewis and Clark, Missoula, Phillips, Pondera, Ravalli, Richland, Rosebud, Sanders, Sweet Grass, and Yellowstone.

Agencies propose legislation...Six of the agencies and entities within the committee's purview presented a total of 38 proposals for legislation (for the 2009 session). A sample of the proposals includes:

- implement the standards and requirements essential for compliance and process improvements for e-records information management. (Secretary of State)
- revise or implement a fee structure for and allow for the online delivery of services for the Administrative Rules of Montana to accommodate traffic on a new online system. (Secretary of State)

- require mandatory e-filing of required political reporting with a simple, opt-out system; eliminate the requirement for concurrent filing of reports with county election administrators in order to ease this burden on local government. (Commissioner of Political Practices)
- require disclosure of late campaign expenditures by independent committees in order to help voters discern the source of new information that comes late in campaigns. (Commissioner of Political Practices)
- require itemization of sub-vendor details for campaign consultant expenditures to enhance consistency with other aspects of campaign reporting law. (Commissioner of Political Practices)
- revise various provisions of the Mortgage Broker and Loan Originator Licensing Act and the Residential Mortgage Lender Licensing Act to address issues stemming from the national, subprime mortgage crisis. (Department of Administration)
- eliminate the Montana Consensus Council. (Department of Administration)
- require employer contributions on working retirees in the systems that currently allow working retirees--PERS, JRS, SRS, FURS. (Public Employees' Retirement Administration)
- address the funding concerns surrounding certain return to work issues and address the issue of TRS members terminating just a few days prior to the end of their contract. (Teachers' Retirement System)
- protect military members in court proceedings regarding custody, visitation, and other "best interest" issues of the children of military service personnel.

All of the proposals have been posted to the committee's website and the proposals that the committee authorized to be drafted are listed in the Legislative Service Divisions' LAWS system with the State Administration and Veterans' Affairs Interim Committee listed as the "requestor".

Montana Administrative Procedures Act...In an ongoing examination of the statutory requirements for agency administrative rules to include a statement of "reasonable necessity for the proposed action" (2-4-302, MCA), the committee requested legislation to affirm the Legislature's purpose and policy regarding these statements (LC 18) and to clarify the conditions under which a statement may be revised (LC 201). LC 18 responds to a Montana Supreme Court decision that held, among other things, that certain provisions of MAPA are procedural rather than

substantive. LC 201 arose because an agency revised a statement of reasonable necessity after the comment period for a proposed administrative rule had expired.

Next meeting...The committee will meet on Monday, Sept. 15. The committee will likely reconsider legislative proposals from the Secretary of State (SOS #4), the Commissioner of Political Practices (COPP #5), and the Department of Administration (DOA #15). The committee may also revisit loose ends from the HJR 46 and HJR 59 studies. Other topics will fill out the remainder of the agenda. The tentative agenda for the Sept. 15 meeting will be posted on the committee's webpage when approved by the presiding officer and will be updated as the meeting date approaches. Please direct questions to Dave Bohyer, committee staff, at dbohyer@mt.gov or (406) 444-3064, or to the committee's presiding officer, Rep. Franke Wilmer, at (406) 599-3639.

## CHILDREN, FAMILIES, HEALTH, AND HUMAN SERVICES

Committee set to wrap up bulk of work in August...The committee will meet this month to wrap up most of its work except for the study of the state's mental health system.

At its Aug. 21-22 meeting, the committee will review bill drafts and take public comment on two other studies--the SJR 5 study of emergency medical services and the SJR 15 study of the state's health care delivery system.

The committee members will also review legislative proposals by the Department of Public Health and Human Services and decide which agency bills to authorize for drafting and pre-introduction.

Final review for EMS bill drafts...The committee will review revisions made to several bill drafts related to the SJR 5 study of emergency medical services. The bills are primarily designed to improve recruitment and retention of volunteer emergency medical technicians and to ensure that the state's volunteer EMS providers have the equipment needed to respond to emergency calls. The bills would:

- provide tax credits for volunteer EMTs and tax deductions for employers who give their workers time off to respond to EMS calls;
- create a grant program to help volunteer agencies buy vehicles and equipment;
- create a special license plate for volunteer EMTs;
- allow lower staffing levels on some ambulance runs;
- provide confidentiality protections to organizations that review EMS calls for quality improvement purposes; and

- add a volunteer EMT to the Board of Medical Examiners.

The committee will also review a new bill draft clarifying the handling of EMS-related complaints and the laws involving EMS medical directors. The bill draft was recommended as part of a performance audit of the state agencies responsible for overseeing EMS providers and EMTs (see p. 3 for coverage of the audit).

The committee will take public comment on the drafts before deciding whether to approve any of them for introduction in the 2009 Legislature.

Credentialing, specialty hospitals, and transparency in health care pricing...As part of its SJR 15 study of the health care delivery system, the committee will take public comment on two bill drafts that have been developed with participation from hospitals, doctors, and other health care providers, as well as insurers.

LC 38 deals with conflicts of interest in the health care field and removes a termination date for a statute that prohibits hospital boards from excluding doctors with competitive interests from working in their hospitals. The bill draft seeks to let consumers decide whether conflicts of interest affect them by requiring disclosure by health care providers of any investment, employment, or financial interest if they refer their patients to other health care providers or facilities.

LC 8888 would either revise licensing provisions for specialty hospitals, which are typically for-profit hospitals focused on specialized care, or would extend a state moratorium on specialty hospitals. The current moratorium on licensing specialty hospitals expires July 1, 2009. The committee has delayed action on this bill draft to see if Congress takes action before the interim is over.

The committee will continue its discussion of transparency in health care pricing. MHA, an association of Montana health care providers, will demonstrate a website it has set up to provide information on pricing by Montana hospitals. Committee members will consider whether to pursue any other action to make information about health care costs more readily available to consumers.

Mental health study continues into October...The committee will hear an update on the study of the state's mental health system. Because the study did not get underway until February, the committee has agreed to hold a special meeting in October to hear the final study report from DMA Health Strategies. The Massachusetts-based company was hired to conduct the study.

This month, DMA will provide the committee with some preliminary ideas for potential legislation, based on its early findings.

DPHHS reports...Department of Public Health and Human Services officials will present three reports required under legislation approved by the 2007 Legislature. The reports will cover:

- the SJR 7 study conducted by DPHHS and the

Department of Justice on whether to require criminal background checks for direct-care workers;

- the suicide prevention plan that DPHHS was required to develop; and
- the work of the Cervical Cancer Task Force, which was charged with studying the effectiveness of the new human papillomavirus vaccine, strategies for educating the public about the vaccine, and the implications of requiring vaccination for continued enrollment in school.

Stay tuned...Details of the August 21-22 meeting will be posted on the committee's website, [www.leg.mt.us/cfhhs](http://www.leg.mt.us/cfhhs), as they become available. Please contact Sue O'Connell at (406) 444-3597 or [soconnell@mt.gov](mailto:soconnell@mt.gov) for more information about committee activities.

## STATE-TRIBAL RELATIONS COMMITTEE

Jurisdictional cooperation and concerns...The State-Tribal Relations Committee's June 23-24 meeting on the Flathead Reservation highlighted jurisdictional cooperation and concerns in a variety of areas.

As part of a discussion about implementation of House Bill 781 (Ch. 287, L. 2007) on race-based traffic stop policies and training, the Lake County sheriff and Polson police chief both described good working relationships with the Flathead tribal police under a cooperative agreement. The level of cooperation is not the same on all reservations, according to Carl Pepion, a tribal court judge on the Fort Belknap Reservation, speaking about the Montana Highway Patrol operations on the Blackfeet and Fort Belknap reservations. The committee will revisit racial profiling at its August meeting.

Members of the Confederated Salish and Kootenai Tribes and other tribes expressed concerns over other jurisdictional imbalances in the relationship between tribes and the state.

Several speakers said that penalties imposed by tribal courts were insufficient to handle cases of domestic violence in comparison with the state's ability to impose criminal penalties. Felonies are prosecuted in federal courts for all tribes except Confederated Salish and Kootenai Tribes, which has an agreement with the state.

A Confederated Salish and Kootenai Tribes spokesman asked whether tribes could receive the same consideration as cities and towns from the state in obtaining all-beverage liquor licenses. State law limits all-beverage liquor licenses to one for each applicant, although there are carve-outs for municipally-owned golf courses or airports. A tribally-owned resort has a liquor license under the tribal name, which means that the tribe cannot own an all-beverage license for a separate, tribally-owned casino, without a change in law. (Alcohol licenses on reservations is not a uniform concern because some reservations are "dry".)

Caught in the middle of negotiations...James Steele, chairman of the Confederated Salish and Kootenai Tribes, urged the committee to endorse an extension of the state's Reserved Water Rights Compact Commission, which is hoping to complete negotiations with the tribe before the scheduled termination of the commission on June 30, 2009. Sen. Carol Juneau has requested a bill draft (LC 57) to extend the life the commission. The Department of Natural Resources, on the other hand, has requested a bill to close out the duties of the reserved water rights compact commission. The committee asked for more information on the history of water compacts and will discuss the compact commission extension at the August meeting.

Tour of the Flathead Reservation...The committee toured parts of the Flathead Reservation June 24 to see various enterprises, including: a new health care clinic in Elmo, the Kerr Dam operated by PPL Montana under an agreement with the tribe, the Salish Kootenai Housing Authority, the Salish Kootenai College, and S&K Technologies. Information on these enterprises will be included in the committee's final report, a draft of which will be available at the August meeting.

Next meeting...The committee will meet Aug. 21 in Room 137 of the Capitol at 9 a.m. for its final meeting of the interim. The agenda will be posted on the committee's website. For more information contact Pat Murdo, committee staff, at (406) 444-3594 or pmurdo@mt.gov.

## ENERGY AND TELECOMMUNICATIONS COMMITTEE

The Energy and Telecommunications Interim Committee met July 16 in Helena and wrapped up work on several of assignments including public power and carbon sequestration.

Carbon sequestration proposal nixed, study resolution moves forward...In June, the ETIC released two reports: "Perspectives on Public Power: A review of the public power model, its history, and its potential in Montana" and "Carbon Sequestration Study: An analysis of geological and terrestrial carbon sequestration regulatory and policy issues." Two bill drafts on carbon sequestration legislation were also available for comment.

During a 30-day public comment period, the committee received about a dozen comments on the carbon sequestration report and a handful of comments on public power.

The first bill draft (LC 4002) considered by the committee would have established the surface owner as the owner of pore space used for the long-term storage of carbon dioxide or other substances, including compressed air. Most of the public comments on carbon sequestration were aimed at the bill draft and focused on liability. Concerns about creating a new property estate, unintended

consequences for mineral owners, and impacts on current industry practices were themes in most comments.

Those submitting comments also noted the lack of Environmental Protection Agency guidance on the classification and regulation of CO<sub>2</sub> under the current underground regulatory frameworks. On July 15, the EPA released draft rules for geological carbon sequestration. Those rules, however, aren't expected to be final until 2011.

The other bill draft the committee considered was a study bill. The proposed study bill would have directed the ETIC next interim to oversee a geologic carbon sequestration study and would have allocated \$25,000 toward the study. The committee opted to pursue a study resolution instead.

The committee also voted to include all public comment in the carbon sequestration report and to include the pore space ownership bill draft in the report for informational purposes.

After reviewing comments on the public power report, the committee modified it and approved it. The two final draft reports and the resolution will come before the committee in September.

Wind integration study update...The committee also heard an update on a wind integration study that is being completed in NorthWestern Energy's service area and learned about draft legislation the Public Service Commission is contemplating.

Next meeting is September...The next ETIC meeting is Sept. 4 in Helena. An oil production and pricing panel is planned. Meeting materials are all available on the ETIC website at [www.leg.mt.gov/etic](http://www.leg.mt.gov/etic). For more information contact Sonja Nowakowski, ETIC staff, at (406) 444-3078.

## ENVIRONMENTAL QUALITY COUNCIL

Climate change study...Following the Environmental Quality Council's July 14-15 meeting, members are asking for public comment on a draft climate change report and a dozen pieces of related, draft legislation.

EQC members have narrowed their study and focused on topics including enhancing solid waste recovery, or recycling opportunities; promoting local food and fiber; improving transportation system management, or efforts to enhance mass transit and ensure adequate transportation planning; providing additional opportunities for low income and rental housing energy efficiency and weatherization; expanding biomass opportunities; and reviewing requirements that new state buildings exceed current building codes or standards.

The draft report, including the draft legislation, is available for public comment from July 22 through Aug. 22. Comments will be compiled and presented to the EQC at the Sept. 8-9 meeting. At that time, the council will consider revisions to the report and draft legislation. The council will decide whether to introduce legislation in the 2009 session.

The full report: "Climate Change: An analysis of climate change policy issues in Montana" is available online at: [www.leg.mt.gov/eqc](http://www.leg.mt.gov/eqc). Copies of the draft report and discussion drafts may also be obtained by calling (406) 444-3078 or (406) 444-3747.

Comments may be submitted by email to [snowakowski@mt.gov](mailto:snowakowski@mt.gov). Please put "climate change" in the subject line. To submit comments by mail, send to: Sonja Nowakowski, Legislative Environmental Policy Office, P.O. Box 201704, Helena, MT 59620-1704.

Agency Oversight...During the July meeting, the EQC agreed to send a letter to the Board of Environmental Review and the Department of Environmental Quality discussing a recent decision requiring Southern Montana Electric Generation & Transmission to implement more stringent pollution controls at its proposed power plant. The council decision followed a recommendation from the EQC Agency Oversight Subcommittee.

In April the BER voted 6-1 that the proposed 250-megawatt coal-fired power plant's air permit needs further review because the plant failed to identify best available control technologies (BACT) to limit particulate matter called PM-2.5.

The letter does not take a position on the proposed Highwood Power Plant. The letter simply states that an agency rule must be based on authority provided in the law and that the rules to implement the intent of the law must be in place before the substance of the rule is imposed on the public. Because the BER acted to preclude the use of the PM-10 surrogate for the PM-2.5 BACT analysis, the EQC recommends that the BER, with the assistance of the DEQ, develop appropriate administrative rules.

Conservation Easement Study...The EQC also reviewed public comments on the study examining options for establishing conservation easements on trust lands. The draft report for HJR 57 was released for public comment in June. Three comments were received and can be viewed at the EQC website.

In general, the study found that the Land Board has several legal options when it comes to state trust land and conservation tools. The draft report does not recommend any legislation, but does include a proposed brochure that explains the basic elements of conservation easements.

Based on the council's recommendations, the final report will be revised and presented in September.

Water policy future...Subcommittees of the EQC and the Water Policy Interim Committee will meet in August to review the water-related responsibilities delegated to the EQC and how those might be handled by a separate committee or a subcommittee of the EQC.

The WPIC, created by the 2007 Legislature as a one-interim committee, has supported the idea that water policy should be regularly studied by the Legislature.

The WPIC has fulfilled its duties, but members have said that water policy should be studied more in the coming years. While the WPIC has examined water policy, the EQC

has also worked on water policy, including its statutory oversight of the Department of Natural Resources and Conservation; Fish, Wildlife, and Parks; and DEQ.

Petro-fund plans...The Petroleum Tank Release Fund subcommittee (a joint panel of the EQC and the Legislative Finance Committee formed to study the insolvency of the fund) has submitted its findings to the EQC. They're available for public review on the EQC website by clicking on the Petroleum Tank Release Fund link under "Subcommittees." The subcommittee has not made any legislative recommendations, saying any proposal is beyond its current directive. Neither the EQC nor the LFC has taken any action on the subcommittee's report.

Final interim meeting set for September...The EQC's last meeting of the interim will be Sept. 8-9. For more information, contact Todd Everts, [teverts@mt.gov](mailto:teverts@mt.gov), (406) 444-3747; Joe Kolman, [jkolman@mt.gov](mailto:jkolman@mt.gov), (406) 444-9280; Sonja Nowakowski, [snowakowski@mt.gov](mailto:snowakowski@mt.gov), (406) 444-3078; or Hope Stockwell, (406) 444-1640, [hstockwell@mt.gov](mailto:hstockwell@mt.gov). The EQC Website is [www.leg.mt.gov/eqc](http://www.leg.mt.gov/eqc).

## LAW AND JUSTICE COMMITTEE

Study of mental health services for justice-involved people...The Law and Justice Interim Committee continues to examine mental health services for justice-involved youth and adults pursuant to its assigned studies (SJR 6, SJR 24, HJR 26, and HJR 50). At its June 26-27 meeting, the committee instructed staff to continue working on bill drafts in the following areas:

- revising court-ordered evaluations and placement of justice-involved youth who may also suffer from a mental illness, a developmental disability, or a severe physical disability;
- jail standards and inspection with an emphasis on suicide prevention; and
- revising Montana's civil commitment laws to encompass community-based alternatives to Montana State Hospital commitments, including:
  - ▶ jail diversion alternatives (i.e., diverting mentally ill persons from jail to crisis services and possible commitment);
  - ▶ emergency detention alternatives pending a petition for involuntary commitment;
  - ▶ after a petition is filed, alternatives for the precommitment period of detention pending the commitment hearing; and
  - ▶ the suspension of the commitment hearing if a respondent agrees to intensive inpatient treatment for up to 14 days.



The Committee also approved the following committee bills:

- a bill to require that a youth be represented by an attorney at a detention hearing unless the right is waived after consultation with an attorney;
- a housekeeping bill to clean up language in the drug court statutes related to federal funding of data collection and evaluation; and
- a housekeeping bill to add the 22nd Judicial District to the list of districts referenced in the judicial nomination commission statute.

The Committee did not approve a bill draft to increase judicial salaries or a bill draft to revise responsibility for the medical costs of persons detained by county law enforcement officers. However, work continues in these areas.

Jail standards and suicide prevention...A three-member subcommittee was appointed to work on jail standards and suicide prevention. The subcommittee met in Bozeman on July 17 and instructed staff to develop a bill draft for a pilot project to be administered by the Department of Public Health and Human Services. The project would be modeled after the Kentucky Mental Health Crisis Network and would provide for standardized screening of jail inmates by mental health professionals. The committee will consider the draft at its next meeting.

Committee meets in July...The committee met July 24-25. Coverage of the meeting will appear in the next issue of the interim newsletter.

For more information, please visit the committee's website at [www.leg.mt.gov/ljic](http://www.leg.mt.gov/ljic), or contact Sheri Heffelfinger at (406) 444-3596 or [sheffelfinger@mt.gov](mailto:sheffelfinger@mt.gov).

## ECONOMIC AFFAIRS COMMITTEE

The Economic Affairs Interim Committee met in Bozeman on July 17-18 to consider a wide range of topics, including university research, economic development, workers' compensation, and disputes related to residential contracting.

Committee tours MSU research labs...The committee toured laboratories and research facilities that Montana State University professors and their undergraduate and graduate students use to conduct research that is yielding promising results. The committee toured similar facilities at the Missoula campus of the University of Montana earlier this year. UM officials were present for the Bozeman meeting, and MSU's president welcomed them by noting that a Saturday afternoon in the fall notwithstanding, the two main campuses do cooperate

extensively in the area of high-tech research, technology transfer, and commercialization. MSU researchers discussed a dazzling array of cutting-edge inquiry on such things as carbon sequestration, bio-terror vaccines, cancer research, agricultural research, and general chemistry. Business faculty discussed initiatives to take students from the classroom into entrepreneurial efforts.

The Director of the MSU Extension Services finished the session with a presentation on its efforts to connect scientists and researchers with local communities.

Homeowners and contractors...The committee heard a discussion of some disputes between homeowners and residential contractors. A working group of homeowners had contacted legislators to bring this topic to the committee. A negative experience with one's home naturally leads to some hard feelings, but the discussion remained on a positive note. A representative of the Montana Building Industry Association said it is important for homeowners to check references of contractors, and that the association has had only one instance of a member of the organization being involved in legal action due to the contractor's work. A representative of the Department of Labor and Industry said that contractors register with the department to prove they have workers' compensation insurance, and that the agency is not responsible for determining the quality of a project. The committee asked legal staff to put together a working group to present information on pertinent code sections and policy options at the next (final) meeting.

Other matters...The governor's Labor-Management Advisory Council on Workers' Compensation discussed some legislative options on workers' compensation. The group's main initiative involves a communications strategy to improve workplace safety based upon a successful effort in British Columbia.

Following a staff briefing, the committee decided not to propose any committee bills this interim.

Next meeting is September...The Economic Affairs Committee meets Sept. 12. The committee will, among other things, review state agency proposed legislation. For more information, contact Andrew Geiger at [angeiger@mt.gov](mailto:angeiger@mt.gov).

## REVENUE AND TRANSPORTATION COMMITTEE

The two subcommittees of the Revenue and Transportation Committee met July 10 and the full committee met that afternoon and July 11.

HB 488 subcommittee considers a variety of topics...Mary Whittinghill, of the Montana Taxpayers Association, summarized some themes of a property tax symposium sponsored by the Texas Taxpayers and Research Association on May 20. Whittinghill talked about some of the limitations of property tax limitation measures and about the advantages of property tax circuit breakers in providing targeted property tax relief. The papers presented at the symposium are available at [www.ttara.org](http://www.ttara.org). Click on the "Documents" tab on the right side of the page and then on "Meeting Handouts".

Dan Bucks, director of the Department of Revenue, described the housing market trend meetings the department has held in 18 communities around the state. These meetings are part of the department's efforts to obtain the best information possible on housing trends related to residential property reappraisal. Last February, subcommittee members expressed concern that a January 1, 2008, baseline date for property reappraisal may miss significant trends in Montana's residential housing market. As a result, the department is using information from realty transfer certificates through June 30. In addition, the statewide meetings solicited the informed opinion of people familiar with local real estate markets. Beki Brandborg, meeting facilitator, described some of the overall housing market trends and trends specific to different price ranges. She said that housing prices are stabilizing, but that the demand for lower-priced homes is strong even though the inventory for these types of homes is low. Bucks reiterated that the state's housing market is stronger than the national average; he also noted that appreciation levels may be more even across the state.

Dud Mahler, a property taxpayer from Whitefish, promoted his idea to limit the growth in taxable value of residential and commercial property and agricultural land to 3 percent a year during the reappraisal cycle up to a maximum taxable value. His proposal would also include reducing mill levies on these properties to maintain revenue neutrality. Jeff Martin, committee staff, provided a review of the proposal and told the committee that a constitutional amendment would be needed to implement it. The subcommittee took no action on the proposal, but told the full committee that it will keep the idea on the table.

Although the subcommittee has been focusing on the reappraisal of residential property, the Department of Revenue is also required to reappraise agricultural and forest lands every six years. Randy Wilke, DOR Property Assessment Division, reported on the department's most extensive reappraisal of agricultural land since the mid-1960s. The department asked the subcommittee for advice on how best to notify landowners of reappraisal results. The

subcommittee offered several suggestions that the department hopes to incorporate into the notifications.

Ed Caplis, of DOR's tax policy and research unit, described how the subcommittee can use a department simulation model to analyze various mitigation strategies.

Dan Dodds, DOR tax policy analyst, presented the fiscal impact of extending the elderly homeowner and renter credit to all taxpayers. Based on participation rates and level of income, the total amount of credits claimed could range from \$28.5 million to \$86.5 million.

SJR 31 subcommittee reviews school funding options...The SJR 31 subcommittee has been examining school funding and taxation. In July, Jim Standaert, of the Legislative Fiscal Division, discussed the effects on school property taxes under a variety of revenue options, including eliminating HB 124 block grants to school districts, increasing direct state aid, increasing the guaranteed tax base ratio, and providing a guaranteed tax base for the Overbase portion of school districts' general fund budgets. He also discussed combining some of these options which would include allocating oil, gas, and coal nonlevy revenue to the state. All of the options, except for the elimination of the HB 124 block grants would increase state costs but lower local property taxes by various amounts. The analysis also showed changes in property tax liability by property class. Standaert also highlighted some of the analysis conducted by the 2005 Quality Schools Interim Committee.

Jeff Martin, Legislative Services Division, summarized how Vermont and Texas recapture revenue from wealthier school districts for reallocation to poorer districts. These wealth-sharing schemes were implemented following successful court challenges to the states' school funding formulas. Wyoming also has a revenue recapture plan in place.

Bill drafts and MDT reports...On the afternoon of July 10, Jeff Martin, committee staff, recommended that the committee introduce legislation to correct an apparent glitch in the amount of the exemption allowed for metal mines gross receipts taxes and to correct inconsistencies in the various tax increment finance district laws. The committee asked staff to prepare the drafts and will decide at its next meeting whether to move forward with the proposals.

Jim Lynch, director of the Montana Department of Transportation, presented the department's legislative proposals for the next legislative session:

- allow the use of electronic bid bonds;
- clarify the aviation fuel tax distribution;
- amend 61-3-710, MCA, to eliminate single state registration system;
- clarify the state's obligation to pay attorney costs in contract actions;
- establish post-crash clearance standards;
- establish traffic control requirements for roundabouts; and
- establish a grace period for annual renewal of GVW licenses.

Although the committee voted to request the bill drafts on behalf of the department, it was concerned about unintended consequences of the proposal dealing with attorney costs.

Lynch reported on the priority of highway projects under rising costs and uncertain revenue and on the enforcement of diesel fuel laws. He also showed the video "Room to Live" on the needless tragedy of not wearing seat belts. The video may be viewed from the state's homepage at <http://www.mt.gov/> or from MDT's website at <http://www.mdt.mt.gov/>. The video does not contain any graphic scenes, but it does convey the overwhelming sense of loss suffered by family and friends of the victim.

More bill drafts... Under HJR 61, the committee has been studying how Montana conforms with federal individual and corporation income tax laws. On July 11 the committee reviewed two bill drafts that would change how Montana is linked to federal law. The first draft (LC9998) would tie Montana tax provisions to the Internal Revenue Code as it read on December 31, 2008. The Legislature would have to take action to revise the "conforming" date in subsequent sessions. The second draft (LC9997) would adopt the December 31, 2008, effective date but would allow the incorporation of federal changes for a two-year period (e.g., January 1, 2009, through December 31, 2010). Again, the Legislature would have to take affirmative action to change the dates.

In addition to giving the Legislature more control of its tax policy, the bill drafts respond to a concern that Montana may be unconstitutionally delegating tax policy to the federal government. Mike Green, representing the Montana Taxpayers Association, told the committee that he does not think there is an unlawful delegation of authority, but if there is, that could be handled by an amendment to the state constitution. Failing that, the taxpayers association would prefer some version of LC9997. Lee Heiman, committee legal advisor, will be working with the Department of Revenue, taxpayer groups, and accountants to work out the details of LC9997.

One more bill draft... Based on a recommendation from the Legislative Finance Committee, the RTIC requested a bill draft that would revise the effect of the Legislature's revenue estimating resolution (HJR 2). The RTIC is responsible for estimating the amount of general fund revenue (and the amount of some other funds) available for legislative appropriation each biennium. Under current law, the committee estimate is the official estimate until amended or finally adopted by the Legislature. Under the proposal, the committee's estimate would be in effect until finally adopted by the Legislature.

DOR legislative proposals (more bill drafts)... Dan Bucks presented the Department of Revenue's legislative proposals to the committee. Some of the proposals include:

- mitigate tax impacts of 2009 reappraisal:
- strengthen and clarify energy tax incentives

(placeholder);

- expand cell phone property tax incentive;
- protect certain landowners from tax increases and preserve agricultural land;
- reduce underage consumption of alcoholic beverages;
- simplify the application process for applying for property tax assistance programs;
- ensure taxpayer confidentiality and clarify laws related to exchange of information between state agencies;
- clarify schedules for creating new taxing jurisdictions;
- provide alternative means of accounting for state employee lodging taxes;
- modify unsuccessful lottery applicant preference for restaurant beer and wine licences.

A summary of the legislative proposals is available on the department's website at <http://mt.gov/revenue/>. The committee voted to request the bill drafts on behalf of the department.

The committee also requested its own bill draft on mitigating the effects of property tax cyclical reappraisal. It is likely that the Legislature will consider a lot of proposals dealing with this topic.

Want to be in the loop?... The HB 488 subcommittee is scheduled to meet Sept. 9 and the full committee Sept. 10. Note that these dates are a change from previously scheduled meeting dates of Sept. 11-12. The agendas and other material for the September meetings will be posted on the committee's website. For more information about the committee, contact Jeff Martin, committee staff, at (406) 444-3595 or [jmartin@mt.gov](mailto:jmartin@mt.gov).

## RTIC\LFD JOINT SUBCOMMITTEE

Subcommittee requests bill draft...For a good part of this interim, both the Revenue and Transportation Interim Committee and the Legislative Finance Committee have been looking at the effects of changing demographics in Montana on the budgets of state and local governments, and, to a lesser extent, on the state's economy. As part of the RTIC's study of school finance and taxation (SJR 31), researchers from the University of Montana and Montana State University reported on demographic trends and projections in Montana. In February, Sen. Jim Peterson recommended that the RTIC undertake a more detailed study of the changing demographics in Montana. Similarly, the Legislative Finance Committee has been looking at some of the challenges that an aging population will have on state government. Some of these challenges include the level of publicly funded services for older Montana's, the stability of the state's tax structure, a tight labor market, and the soundness of public employee retirement systems and health insurance.

Rather than undertake separate studies, the two committees formed a joint subcommittee to decide how best to analyze the looming effects of the state's changing population. The subcommittee held its second meeting on July 9. Terry Johnson, Legislative Fiscal Division, told the subcommittee that by 2020, Montana will rank third or fourth in the country for people 65 years old or older (Montana currently ranks 14th). He also recommended areas of study that the subcommittee should consider. These include analyses of tax policy and revenue, governmental services and expenditures, personal consumption and labor force trends, and public retirement and health insurance systems. After discussing the recommendations, the subcommittee asked staff to prepare a bill draft for its consideration.

The subcommittee will conduct a teleconference meeting Aug. 18 at 11 a.m. to work out the specifics of the bill draft. The draft will be available in early August, and the public may participate in the meeting in Room 137 of the Capitol. If the subcommittee approves the draft, it will be presented to each of the full committees for joint sponsorship.

An agenda, bill draft, and other material for the August meeting will be posted to the LFC and RTIC websites. For more information, contact Jeff Martin at (406) 444-3595 or [jmartin@mt.gov](mailto:jmartin@mt.gov), or Clayton Schenk at (406) 444-2986 or [cschenck@mt.gov](mailto:cschenck@mt.gov).

## EDUCATION AND LOCAL GOVERNMENT COMMITTEE

K-12 Subcommittee...The K-12 Subcommittee met May 12. Subcommittee members were given an update on the court filing by the Montana Quality Education Coalition (MQEC). It also received a progress report from the Department of Administration on the recently completed statewide school facilities inventory which has recently been completed. The subcommittee was also given an overview of Oregon's educator's benefit program.

PEPB Subcommittee...The subcommittee discussed and prepared the following recommendations for the full committee:

- "Shared policy goals" document
- Bitterroot Valley Community College (and consider a possible joint resolution)
- Faculty and staff retention issues
- Board of Regents budget package
- HJR-22 (re: access to dental care in Montana)

Joint meeting of K-12 and PEPB subcommittees...The K-12 and PEPB subcommittees held a joint meeting to discuss "shared policy goals" and to review the progress of the Kindergarten—College Working Group. The joint subcommittees voted to present the shared policy goals to the full committee.

Education and Local Government (ELG) Interim Committee...The full committee met on June 13 to consider the following items:

- Update on the Montana Quality Education Coalition lawsuit
- Overview of the 2005 Quality Schools Interim Committee findings
- Oregon's educator's benefit program
- HJR 22 report. The committee voted to approve the drafting of a committee bill that would create a dental student loan repayment component to complement the Rural Physicians Incentive Program, as well as a Dental Extender program.
- Bitterroot Valley Community College report. The ELG voted to approve the drafting of a committee joint resolution in favor of establishing a Bitterroot Community College. It also approved a study resolution to examine the community college establishment process.
- Montana 529 Investment Plan report
- Administrative efficiencies
- Student Asst / Scholarship reports

Next meeting in September...The Education and Local Government Committee is scheduled to meet Sept. 4-5 in Helena. For more information about the committee, contact Casey Barrs, committee staff, at (406) 444-3957.

## THE BACK PAGE

### ARE YOU KIDDING ME? JUDICIAL HUMOR IN COURT OPINIONS

By Lisa Mecklenberg Jackson, Staff Attorney  
Montana Legislative Services

#### LAUGHS IN THE LAW?

Although judges may sometimes be the brunt of jokes, do they ever turn the tables and write humorous opinions? Judges--funny? The opinions they render--humorous? Black robes, solemn faces, serious edicts. That's funny? No way, you may say. But based upon my in-depth and ever-so-detailed research, I beg to differ. It may not be the "laugh-out-loud funny" that many of us recognize as humorous, but there have been a lot of what I would call, "funny clever" judicial opinions.<sup>1</sup> The purpose of this article is to relate just a few of the gaveled-ones mirth and cleverness in writing judicial opinions. I do so with utmost respect and admiration.

#### CHUCKLES ON THE NATIONAL LEVEL

Judges can be quite clever, and it is not surprising that there have been many judicial opinions that bear a sharp and unique<sup>2</sup>, and even funny, perspective.<sup>3</sup> From rhyming to suing Satan, there's a little something for everyone.<sup>4</sup> What follows are selected opinions from around the country with

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<sup>1</sup>The use of humor can be an effective tool of persuasion. Well-executed humor can make legal writing more accessible and hence more persuasive. Alex B. Long, "[Insert Song Lyrics Here]: The Uses and Misuses of Popular Music Lyrics in Legal Writing," 64 Wash. & Lee L. Rev. 531 (2007).

<sup>2</sup>One of my favorite cases is *Zim v. Western Publishing Co.*, 573 F.2d 1318 (5th Cir. 1978). A breach of contract case for book royalties, Judge Goldberg writes "In the beginning, Zim [the author] created the concept of the Golden Guides. For the earth was dark and ignorance filled the void. And Zim said, let there be enlightenment and there was enlightenment ... And together with his publisher, Western, he brought forth in the Golden Guides knowledge of all manner of living things ... And Zim saw that it was good." The next section of the opinion starts with "Then there rose up in Western a new Vice-President who knew not Zim. And there was strife and discord, anger and frustration between them for the Golden Guides were not published or revised in their appointed seasons." Upon losing at the district court level, "Zim spake unto the Court of Appeals saying, make a sacrifice of the judgment below." After much discussion along these same lines, the court of appeals affirmed in part, reversed in part, and remanded stating "therefore shall it come to pass that the district judge shall write another chapter in the chronicle of Zim."

<sup>3</sup>Thanks to the University of Washington Marian Gould Gallagher Law Library (one of my alma maters), for its insightful article on "Judicial Humor". <http://lib.law.washington.edu/ref/judhumor.html>.

<sup>4</sup>I even found one judicial opinion in which the judge felt he had to respond with poetry. In *Brown v. State*, 216 S.E.2d 356 (Ga. Ct. App. 1975), Judge Evans wrote, "This opinion is placed in rhyme because approximately one year ago, in Savannah, at a very convivial celebration, the distinguished Judge Dunbar Harrison, Senior Judge of Chatham Superior Courts, arose and addressed those assembled and demanded that if Judge Randall Evans, Jr. ever again was so presumptuous as to reverse one of his decisions, that the opinion be written in poetry.

their humorous portions highlighted.

#### PARODY AND VERSE IN OPINIONS

*Fisher v. Lowe*, 333 N.W.2d 67 (Mich. Ct. App. 1983)  
In a case featuring an "interaction" between a car and a tree, Judge Gillis wrote the opinion as a parody of Joyce Kilmer's poem, "Trees":

We thought that we would never see  
A suit to compensate a tree.  
A suit whose claim in tort is prest  
Upon a mangled tree's behest;  
A tree whose battered trunk was prest  
Against a Chevy's crumpled crest;  
A tree that faces each new day  
With bark and limb in disarray;  
A tree that may forever bear  
A lasting need for tender care.  
Flora lovers though we three,  
We must uphold the court's decree.

#### *Country Western is not dead*

*Jenkins v. Commissioner*, 47 T.C.M. (CCH) 238 (1983)  
Footnote 14 contains an ode to Conway Twitty, petitioner in this case:

Twitty Burger went belly up  
But Conway remained true  
He repaid his investors, one and all  
It was the moral thing to do.  
His fans would not have liked it  
It could have hurt his fame  
Had any investors sued him  
Like Merle Haggard or Sonny James.  
When it was time to file taxes  
Conway thought what he would do  
Was deduct those payments as a business expense  
Under section one-sixty-two.  
In order to allow these deductions  
Goes the argument of the Commissioner  
The payments must be ordinary and necessary  
To a business of the petitioner.  
Had Conway not repaid the investors  
His career would have been under cloud,  
Under the unique facts of this case

The Court held that the deductions were allowed.

#### *Cotton begins to smell rotten*

*United States v. Batson*, 782 F.2d 1307 (5th Cir. 1986)  
In the opening sentence of this case about the cotton set-aside program, Judge Goldberg recites:

Some farmers from Gaines had a plan.  
It amounted to quite a big scam.  
But the payments for cotton  
began to smell rotten.  
Twas a mugging of poor Uncle Sam.  
The ASCS and its crew

uncovered this fraudulent stew.  
After quite a few hearings,  
the end is now nearing--  
It awaits our judicial review.

### ***Bankruptcy and a bird***

In re Love, 61 B.R. 558 (Bankr. S.D. Fla. 1986)

The decision contained a parody of Edgar Allen Poe's "The Raven", beginning:

Once upon a midnight dreary, while I pondered weak and weary  
Over many quaint and curious files of chapter seven lore  
While I nodded nearly napping, suddenly there came a tapping  
As of some one gently rapping, rapping at my chamber door,  
"Tis some debtor" I muttered, "tapping at my chamber door--  
Only this and nothing more."  
Ah distinctly I recall, it was in the early fall  
And the file still was small  
The Code provided I could use it  
If someone tried to substantially abuse it  
No party asked that it be heard.  
"Sua sponte" whispered a small blackbird.

### ***Rights for the fights***

Joe Hand Promotions v. Sports Page Café, 940 F. Supp. 102 (D.N.J. 1996)

The promoter of a boxing match brought suit against restaurant and bar owners for allegedly displaying a fight for patrons without paying promoter for the broadcast rights. Judge rendered his decision (and footnotes) in verse. Here is a sample:

The genesis happened on an April night  
When plaintiff promoted a boxing fight  
And transmitted it live for the usual fee  
For paying subscribers to watch on T.V.  
The bout was between Messrs. Holmes and McCall  
Whose pugilistic talents are well-known to all.  
The match evoked international attention  
But the outcome herein shall go without mention.  
Defendants allegedly exhibited the match  
In their respective taverns for their patrons to catch.  
Plaintiff's complaint is based on that section  
Installed in the Code for easy inspection  
Which forbids such transmissions, recorded or live:  
47 U.S.C. Section 605.

### ***A girls' best friend***

Porreco v. Porreco, 811 A.2d 566 (Pa. 2002) (Eakin, J., dissenting)

In a case involving a prenuptial agreement and a cubic zirconium engagement ring, Justice Eakin wrote his dissent in verse (causing his colleagues to write concurring opinions questioning the prudence of writing an opinion in rhyme).

A groom must expect matrimonial pandemonium  
when his spouse finds he's given her a cubic zirconium  
instead of a diamond in her engagement band,

the one he said was worth twenty-one grand.  
Our deceiver would claim that when his bride relied  
on his claim of value, she was not justified  
for she should have appraised it; and surely she could have,  
but the question is whether a bride-to-be would have.  
The realities of the parties control the equation,  
and here they're not comparable in sophistication;  
the reasonableness of her reliance we just cannot gauge  
with a yardstick of equal experience and age.  
This must be remembered when applying the test  
by which the "reasonable fiancé" is assessed.  
She was 19, he was nearly 30 years older;  
was it unreasonable for her to believe what he told her?

### ***SAY WHAT?***

#### ***Going Hollywood!***

United States v. Syufy Enterprises, 903 F.3d 659 (9th Cir. 1990)

Mentions the titles of at least 200 movies.<sup>5</sup>

#### ***It's hot down there!***

United States ex rel. Mayo v. Satan, 54 F.R.D. 282 (W.D. Pa. 1971)

Plaintiff alleged that Satan caused his misery and downfall.<sup>6</sup>

#### ***Snap, crackle, pop!***

In the Matter of West Texas Marketing Corp., 12 F.3d 497 (5th Cir. 1994)

In this case about the IRS hoping to collect an overpayment to a Chapter 7 debtor with the name "Kellogg," Judge Goldberg wrote, "This case makes plain the proposition that Kellogg does not have a monopoly on flakes. Indeed, it is Kellogg's opponent, the United States Government acting through the Internal Revenue Service . . . which has committed two scoops of errors, allowing a case which should have been a snap, to dissolve into a series of crackles and pops."

<sup>5</sup> There are many movies with legal themes. Just a sampling includes *Absence of Malice*, *Philadelphia*, *My Cousin Vinny*, *Class Action*, *A Civil Action*, *And Justice For All*, *To Kill a Mockingbird*, *Suspect*, *To Live and Die in L.A.*, *Murder in the First*, *The Rainmaker*, *The Firm*, *Primal Fear*, *From the Hip*, *Runaway Jury*, *A Few Good Men*, *Sleepers*, *A Time to Kill*, *JFK*, *Legal Eagles*, *Midnight in the Garden of Good and Evil*, *Inherit the Wind*, *Amistad*, *12 Angry Men*, *Witness for the Prosecution*, *Adam's Rib*, *Jagged Edge*, and *Reversal of Fortune*.

<sup>6</sup> Plaintiff alleges that Satan has on numerous occasions caused plaintiff misery and unwarranted threats, against the will of the plaintiff, that Satan has placed deliberate obstacles in his path and has caused plaintiff's downfall. Plaintiff alleges that by reason of these acts Satan has deprived him of his constitutional rights. Plaintiff's claim was dismissed for failure to include proper instructions as to service of process.

**MONTANA HAS ITS OWN JUDICIAL WIT<sup>7</sup>**

Not to be outdone, Montana has had its share of "unusual" judicial opinions.

***Hot hand at poker***

Gallatin County v. D & R Music & Vending, Inc. 676 P.2d 779 (Mont. 1984)

In this case about electronic poker machines, Justice Sheehy wrote his dissent in verse:

Draw-80 Poker machines, say the majority, are full of evil designs

As if they had never thrilled to four aces, or even kingsfull of nines.

The county attorneys oppose the machines although twenty-six of them have licensed such machines coyly.

Now they contend Draw-80 isn't poker because it isn't listed in Hoyle.

Well, I have looked at Hoyle, and to tell you no lies

There are as many kinds of poker as it has entered into the heart of man to devise.

Hoyle lists Stud Poker, Draw Poker, Hold-Em, Low Ball, Cincinnati and a lot more, but my, oh my oh,

Among those not listed in Hoyle, to name a few, are Kings Wild Low Ball With Two Jerks, Duffner, Deuces Are Wild in The Presence of Clubs, Sullivan, Payday At Kelly Shaft, O'Donnell and Steubenville, Ohio.

Lest your senses go batty,

The game of Steubenville is so-called because it is close to Cincinnati.

One thing above all the majority should have kept in mind:

Poker is any game where two pairs beat a pair, three of a kind beat two pairs, a straight beats three of a kind, a flush beats a straight, a full house beats a flush, four of a kind beat a full house, and a straight flush beats four of a kind.

Any game that has winning hands in that progression is poker

With or without a joker

And no judicial opinion, no matter how weighty,

Can make anything but poker out of Draw-80.

Draw-80 may seem sinister

To one's minister,

But putting fences around what poker means is as preposterous

As arguing how many angels can stand on the point of a rhinoceros.

But oh, say the majority, it takes two to play poker, just like it takes two to tango,

Forgetting that when poker players want to play poker, they are not interested in the fandango.

Draw-80 Poker can be described in terms the simplest:

It is one-draw poker with five possible discards and no joker, and the house has two kings to beat, as any poker player could tell you from senior citizens to the pimpest.

The majority read into the statute that poker is not poker unless one is taking cards from a human dealer

Which would be all right if the dealer ain't a peeler.

Many a poker player on an ego trip

Has dropped a bundle to a dealer with a mechanic's grip.

It makes a real poker player panic

To see a pack of bicycles in the grip of a mechanic.

But this Court has been so busy expanding the law of torts and interpreting wills

It forgot about shills.

So now, instead of a tamper-proof device to play with,

Montanans must seek out human dealers to gamble their pay with.

Finally, if there is anything that a Draw-Poker machine can be thought to mean

It is not a slot machine.

A chimp can be taught to play mindlessly on a one-armed bandit

But most humans won't learn not to discard aces or not to draw to an inside straight, if we are the least bit candid.

The Draw-80 machine owners should not have lost this case but they did.

They came to this Court with this case holding aces and eights, and you know what that hand did to Billy The Kid.

In the shortest of synopses

They lost to the blue probosces,

Now while the Order of the Blue Nose relaxes,

Cities and counties can go about replacing lost revenues by raising other taxes.

Poker players of Montana, unite!

Come out of the closet, or at least turn on the closet light.

***And the race is on!***

Smith v. Board of Horse Racing, 1998 MT 91, 288 Mont. 249, 956 P.2d 752 (1998)

In a case involving a due process appeal for a lost horse race,<sup>8</sup> Justice Leaphart goes rock n' roll, stating, "Ultimately, there is no guarantee that [the plaintiff] will 'get what he wants.' If not, he, like Mick Jagger, will be lamenting, 'I can't get no satisfaction.' Although due process does not guarantee 'satisfaction,' it does guarantee that he be allowed a chance to make out a case for satisfaction."

<sup>7</sup>The Montana Supreme Court has also displayed a rather cynical wit in some of its recent opinions. In a 2007 case, Justice Nelson noted the lack of conciseness and cohesiveness in the parties' briefs, mentioning it was with great difficulty that the court slogged through the quagmire of issues and contentions presented on appeal. Nevertheless, Nelson noted, the court "managed to drain the swamp sufficiently to reveal at the bottom, seven issues for review."

<sup>8</sup>In a horse race, when a protest is filed, the stewards are vested with authority to rule on the protest by reviewing videotape replays of the race. In this case, the stewards determined that the plaintiff's horse obstructed the other horses and disqualified him. The plaintiff appealed to the Board of Horse Racing. The board determined that Rule 8.22.302, ARM, precluded it from substituting its judgment for that of the stewards on questions of fact and voted to affirm the stewards' decision. The plaintiff appealed to the district court which found that, since the plaintiff was allowed meaningful participation in the board hearing he was not deprived of due process. The plaintiff appealed to the Montana Supreme Court which reversed the district court.

**Merry Christmas!**

State v. Gallagher, 2005 MT 336, 330 Mont. 65, 125 P.3d 1141 (2005)

Getting into the Christmas spirit [the decision was rendered December 22, 2005], Justice Rice evokes strains of "'Twas the Night Before Christmas".

"At approximately, 8:00 p.m. on the evening of March 17, 2002, while watching television in his home in Charlo, MT, Richard Borden heard a loud crash. Upon hearing the clatter, he sprang from his chair to see what was the matter. He flew to the dining room, where, to his great surprise, had appeared a white flatbed pickup truck."<sup>9</sup>

**And this bed is just right!**

State v. Lessard, 2008 MT 192, 344 Mont. 26, 185 P.3d 1013 (2008)

In this case involving the theft of several carved bears in Flathead County, Justice Nelson concluded the defendant's alcohol and gambling conditions were too much, that no conditions would be too little, and that the drug-testing condition was just right.<sup>10</sup>

**A DITTY FROM THE DISTRICT COURT**

If you think the judicial humor in Montana displays itself only at the Supreme Court, I need only point to an opinion out of the Thirteenth Judicial District in February 2007<sup>11</sup>, in which Judge Todd's sentencing memorandum makes numerous references to the music of The Beatles.<sup>12</sup>

Mr. McCormack, you pled guilty to the charge of Burglary. To aid me in sentencing, I review the pre-sentence investigation report. I read with interest the section containing Defendant's statement. To the question of "Give your recommendation as to what you think the Court should do in this case," you said, "Like the Beatles say, LET IT BE".

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<sup>9</sup>The truck had plowed through the wall, broken a window, and upon Borden's discovery, was still spinning its wheels in the dining room. Sparks and exhaust fumes from the vehicle triggered the smoke alarms in Borden's house, and he acted quickly to turn off the electrical power to avoid further problems. Before Borden could get the pickup's license plate number, the driver was able to disentangle the truck and drive away. Nine downed fence posts and broken cement work completed the outdoor portion of the damages. The same truck then narrowly missed a collision with another car and finally came to rest on the lawn of a law enforcement officer with the U.S. Fish & Wildlife Service. The driver was found guilty of DUI.

<sup>10</sup>Goldilocks, call your office.

<sup>11</sup>State v. McCormack, Cause No. DC 06-0323, Yellowstone County.

<sup>12</sup>The Top Ten most frequently cited popular music artists in legal writing are (in descending order): Bob Dylan, The Beatles, Bruce Springsteen, Paul Simon, Woody Guthrie, Rolling Stones, Grateful Dead, Simon & Garfunkel, Joni Mitchell, and R.E.M. Alex B. Long, "[Insert Song Lyrics Here]: The Uses and Misuses of Popular Music Lyrics in Legal Writing," 64 Wash. & Lee L. Rev. 531 (2007).

While I will not explore the epistemological or ontological overtones of your response, or even the syntactic or keys of your allusion, I will say HEY JUDE, DO YOU WANT TO KNOW A SECRET? The greatest band in rock history spelled their name B-E-A-T-L-E-S.

I interpret the meaning of your response to suggest that there should be no consequences for your actions and I should just LET IT BE so that you could live in STRAWBERRY FIELDS FOREVER. Such reasoning is HERE, THERE AND EVERYWHERE. It does not require a MAGICAL MYSTERY TOUR of interpretation to know THE WORD means leave it alone. I trust we can all COME TOGETHER on that meaning.

If I were to overlook your actions and LET IT BE, I would ignore that DAY IN THE LIFE of April 21, 2006. Evidently, earlier that night you said to yourself I FEEL FINE while drinking beer. Later, whether you wanted MONEY or were just trying to ACT NATURALLY, you became the FOOL ON THE HILL on North 27th Street. As Mr. MOONLIGHT at 1:30 a.m., you did not THINK FOR YOURSELF but just focused on I, ME, MINE.

Because you didn't ask for HELP, WAIT for SOMETHING else, or listen to your conscience saying HONEY DON'T, the victim later that day was FIXING A HOLE in the glass door you broke. After you stole the 18 pack of Old Milwaukee, you decided it was time to RUN FOR YOUR LIFE and CARRY THAT WEIGHT. But when the witness said BABY IT'S YOU, the police responded I'LL GET YOU and you had to admit that YOU REALLY GOT A HOLD ON ME. You were not able to GET BACK home because of the CHAINS they put on you. Although you hoped the police would say I DON'T WANT TO SPOIL THE PARTY and WE CAN WORK IT OUT, you were in MISERY when they said you were a BAD BOY. When the police took you to jail, you experienced SOMETHING NEW as they said HELLO GOODBYE and you became the NOWHERE MAN.

Later when you thought about what you did, you may have said I'LL CRY INSTEAD. Now you're saying LET IT BE instead of I'M A LOSER. As a result of your HARD DAY'S NIGHT, you are looking at a TICKET TO RIDE that LONG AND WINDING ROAD to Deer Lodge. Hopefully you can say both now and WHEN I'M 64 that I SHOULD HAVE KNOWN BETTER.<sup>13</sup>

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<sup>13</sup>Probably the most common use of popular music in legal writing is to quote or paraphrase lyrics that are somewhat consistent with the topic being discussed in order to add some color to the writing or to help establish the writer's theme. Alex B. Long, "[Insert Song Lyrics Here]: The Uses and Misuses of Popular Music Lyrics in Legal Writing," 64 Wash. & Lee L. Rev. 531 (2007). Legal analysis frequently requires a lawyer to compare dissimilar situations or concepts. Lawyers reason by analogy. They distinguish past precedent. Likewise, metaphors and similes are the bread and butter of songwriting. Therefore, it is only natural that lawyers employ popular music lyrics in their writing to help make connections for their readers. Ibid.



**CHAOS OR COMEDY?**

A physician, an engineer and a judge were arguing about whose profession was the oldest. The surgeon announced, "Remember how God removed a rib from Adam to create Eve? Obviously, medicine is the oldest profession."

The engineer replied, "But before that, God created the heavens and the earth from chaos, in less than a week. You have to admit that was a remarkable feat of engineering, and that makes engineering an older profession than medicine."

The judge smirked, and said, "Who do you think created the chaos?"

While I don't think it is an accurate statement to say our national and state judges are the creators of chaos, I do think it is fair to say that if they were, as these opinions clearly display, they may very well have a sense of humor about doing it. Judges--funny? I think it's safe to say yes.<sup>14</sup>

**ARTICLES ON JUDICIAL HUMOR**

Laura Krugman Rey, *Laughter at the Court: The Supreme Court as a Source of Humor*, 79 S. Cal. L. Rev. 1397 (2006).

Mary Kate Kearney, *The Propriety of Poetry in Judicial Opinions*, 12 Widener L.J. 597 (2003).

Thomas E. Baker, *A Compendium of Clever and Amusing Law Review Writings*, 51 Drake L. Rev. 105 (2002).

Thomas E. Baker, *A Review of Corpus Juris Humorous*, 24 Tex. Tech L. Rev. 869 (1993).

Judge Alex Kozinski & Eugene Volokh, *Lawsuit, Shmawsuit*, 103 Yale Law Journal 463 (1993).

Michael Saint-Onge, *Legal Levity*, Law Libr. Lights, Jan./Feb. 1992, at 9.

Susan K. Rushing, *Student Essay, Is Judicial Humor Judicious?* 1 Scribes J. Legal Writing 125 (1990).

George Rose Smith, *A Critique of Judicial Humor*, 43 Ark. L. Rev. 1(1990).

Marshall Rudolph, *Judicial Humor: A Laughing Matter?* 41 Hastings L.J. 175 (1989). Adalberto Jordan, *Imagery, Humor, and the Judicial Opinion*, 41 U. Miami L. Rev. 693 (1987).

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<sup>14</sup>This coming from a person with a giant ear in her office and a pencil sharpener shaped like a nose. Yes, you can guess where the pencil goes.



# INTERIM CALENDAR

UNLESS OTHERWISE SPECIFIED, ALL ROOM DESIGNATIONS ARE IN THE CAPITOL

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
August 2008						2
3	4	5	6	7	8	9
10	11	12 Water Policy Committee, Room 152	13 Water Policy Committee, Room 152	14	15	16
17	18 RTIC\LFC joint subcommittee, teleconference, Room 137	19	20 Fire Suppression Committee, Stage Stop Inn, Choteau, 9 a.m.	21 State-Tribal Relations Commit- tee, Room 137  Children, Families, Health and Human Services Committee, Room 102	22 Children, Families, Health and Human Services Committee, Room 102	23
24	25	26	27	28	29	30
31						

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
September 2008						
	1	2	3	4 Energy and Telecommunications Committee  Education and Local Government Committee	5 Education and Local Government Committee	6
7	8 Environmental Quality Council	9 Environmental Quality Council  RTIC HB 488 subcommittee	10 Revenue and Transportation Committee	11 Water Policy Committee, Room 152	12 Water Policy Committee, Room 152  Fire Suppression Committee  Economic Affairs Committee	13
14	15 State Administration and Veterans' Affairs Committee  Law and Justice Committee	16 Legislative Council	17	18	19	20
21	22	23	24	25	26	27
28	29	30				

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